

**Public Disclosure Commission
Electioneering Communication Rules
Implementing ESSB 5034 (Chapter 445, Laws of 2005)
GROUP 1
For January 23, 2006 Commission Meeting**

Background and Timeline

ESSB 5034 (Chapter 445, Laws of 2005) passed during the 2005 legislative session. Two sections became effective on July 1, 2005; the remainder became effective January 1, 2006. In fall 2005, the Commission established an implementation goal for ESSB 5034 rules, began preliminary rulemaking discussions and reviewed staff's introductory proposals and timelines. In October 2005, the Commission answered several preliminary questions staff identified. Further initial discussion by the Commission occurred in November 2005, following an explanation that formal rulemaking would occur in 2006. These next steps will begin at the January 2006 Commission meeting.

For ease of reference, the rulemaking will be divided into three groups. Draft rule language for all three groups will be reviewed at the January and/or February 2006 Commission meetings (Group 3 will be considered in February). Proposed language is to be filed with the Code Reviser no later than March 22, 2006, with a public hearing on April 27, 2006, for an effective date 31 days after the adopted rules are filed with the Code Reviser.

Group 1

In November, the Commission considered proposed language for some rules and changes to the C-6 form. In December, PDC staff conducted a stakeholder meeting to review those possible rules and amendments identified to date that would be necessary to implement ESSB 5034. At its January 2006 meeting, the Commission will be asked to continue the rulemaking process on those rules and approve draft language. Those rules will be referred to as Group 1. Possible language is attached. Much of it is the same as previously provided to the Commission in November.

Group 2

PDC staff also described in October and November that there would be additional rulemaking necessary to implement ESSB 5034. At its January 2006 meeting, the Commission will therefore be asked to consider additional proposals for other rules and to begin rulemaking for those rules. Draft language will need to be approved at the January or February 2006 meeting. Stakeholder review will be scheduled for February 8, 2006. Those rules will be referred to as Group 2. Possible language is attached and labeled Group 2.

Group 3

Lastly, as staff had also described, there will need to be a comprehensive review of current PDC rules in Title 390 WAC, particularly WAC 390-18 (political advertising) and WAC 390-05 (definitions) to update the political advertising rules, to provide that the rules are consistent with the electioneering communications rules, and that cross-references to all rules are internally consistent. Any other ESSB 5034 rulemaking not previously identified will be included in this group. That rulemaking discussion is also scheduled to occur at the Commission's February 2006 meeting. Those rules will be referred to as Group 3. Stakeholders will be provided a copy of Group 3 draft rules. Possible language will be provided in a separate memorandum for the February meeting.

GROUP 1

A.

Draft Revisions to Text of C-6 Form and Amended Rule Reference to C-6 Form - WAC 390-16-060

***DRAFT AMENDMENTS:**

WAC 390-16-060

Forms for report of independent expenditures and electioneering communications.

(1) The official form for reports of independent expenditures and electioneering communications as required by RCW 42.17.100, ~~and 42.17.103~~ and RCW 42.17.565 is designated "C-6," revised ~~6/02~~ 5/06. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504 and online at www.pdc.wa.gov. Any paper attachments shall be on 8 1/2" x 11" white paper.

(2) The C-6 report may be filed electronically consistent with WAC 390-19-040 by using an electronic filing alternative provided or approved by the commission. C-6 reports of electioneering communications shall be filed electronically as provided in RCW 42.17.565.

[FORM IS LOCATED HERE IN THE RULE --- SEE DRAFT CHANGES, NEXT PAGES]

CITES:

RCW 42.17.370(1) (rulemaking authority); RCW 42.17.360(1) (authority to develop and provide forms); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); ESSB 5034, Section 3(1) [RCW 42.17.565] (electioneering communications reporting; forms).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission has had prior statutory authority to develop reporting forms, and adopt rules, which also remain in law, and ESSB 5034 also provides that payments for electioneering communications must be reported on forms developed by the Commission by rule.

ESSB 5034 provides that reporting can be on a form that already exists. As discussed at the prior Commission meetings, the current proposal is to amend the C-6 form to accommodate this reporting. Stakeholder input in December supported the Commission amending the C-6 form. The current C-6 form is located in rule at WAC 390-16-060. The text of that rule and of the form will need to be amended to incorporate electioneering communications reporting.

Reporting Form for: (check one)

Instructions on Page 3

- ☐ **INDEPENDENT EXPENDITURES** (Occurring at any time) — **\$100 or more**
☐ **INDEPENDENT EXPENDITURE ADS** (Appearing within 21 days of an election) — **\$1,000 or more**
☐ **ELECTIONEERING COMMUNICATIONS, Except Contributions** (Appearing within 60 days of an election) — **\$5,000 or more**

1. Name and complete postal mailing address of sponsor:

E-mail

Telephone

2. Itemize expenditures of more than \$100 associated with the independent expenditure or electioneering communication.

Date Made	Date First Presented/ Mailed	Name and Address of Vendor or Recipient	Description of Expenditure (e.g., direct mail or newspaper, TV or radio ad)	Amount or Value (*See Below)
Expenditures \$100 or less not itemized above				\$

Amount or Value

*If no reasonable estimate can be made of value, describe activity, services, property or right furnished precisely and attach copy of item produced or distributed.

Total this report

\$

Total independent expenditures and electioneering communications made during this election campaign. Include amounts shown in this report and previously submitted C-6 reports.

\$

3. List of candidate(s) or ballot proposition(s) identified in the advertising.

Candidate/Proposition	Office/District/ Proposition No.	Party	Check Support or Oppose	Show portion of current expense attributable to each candidate or proposition	Show total C-6 expenses related to each candidate/ proposition during election campaign
			<input type="checkbox"/> <input type="checkbox"/>		
			<input type="checkbox"/> <input type="checkbox"/>		
			<input type="checkbox"/> <input type="checkbox"/>		
			<input type="checkbox"/> <input type="checkbox"/>		
			<input type="checkbox"/> <input type="checkbox"/>		
Continued on attached sheet <input type="checkbox"/>					

Filer Name:**4. If reporting an Electioneering Communication, it is necessary to disclose information concerning the source of funding for the communication. Select the description that applies:**

- (a) ___ An individual using only personal funds.
- (b) ___ An individual using personal funds and/or funds received from others.
- (c) ___ A business, union, group, association, or other organization using only general treasury funds.
- (d) ___ A business, union, group, association, or other organization using general treasury funds and/or funds received from others.
- (e) ___ A political committee filing C-3 and C-4 reports. (RCW 42.17.040 - .090)
- (f) ___ A political committee filing C-5 reports. (RCW 42.17.093)
- (g) ___ Other

If (b), (d), (f), or (g) applies, complete section 5 below. If (e) applies, also complete section 5 if the committee received funds that were requested or designated for the communication.

5. Sources giving in excess of \$250 for the electioneering communication:

Date Received	Source's Name, Address, City, State, Zip	For individuals, Employer's Name, City and State	Amount
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
		Sub-Total	
	Continued on attached sheet <input type="checkbox"/>	Amount from attached pages	
TOTAL FUNDS RECEIVED			

Sponsor of Independent Expenditure or Electioneering Communication

I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or an agent of a candidate nor does it otherwise constitute a contribution under RCW 42.17.020. I further certify that the above information is true, complete, and correct to the best of my knowledge.

Signature

Printed Name

Street address

City/State/Zip

Date Signed

Place Signed (city and county)

*RCW 9A.72.040 provides that "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."

B.

Draft New Rule Defining "Periodical"

***DRAFT NEW RULE:**

WAC 390-XX-XXX Periodical. "Periodical" means a publication on paper that is serial in nature and appears or is intended to appear indefinitely at regular or stated intervals, generally more frequently than annually.

CITES:

RCW 42.17.370(1) (rulemaking authority); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); Section 6(20) [RCW 42.17.020(20)] (electioneering communication definition).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission had prior rulemaking authority as well, which also remains in law.

ESSB 5034 provides that an electioneering communication can include a "periodical" if the criteria are met in Section 6(20) [RCW 42.17.020(20)]. The term is not defined. Defining the term will provide guidance to filers and other participants in the state campaign process.

The electioneering communication bill was drafted and presented to the Legislature as addressing only traditional forms of advertising, while not capturing websites, emails, telephone calls or leaflet drops. As such, the draft rule defines periodical as a paper publication.

The statute at Section 6(20) [RCW 42.17.020(20)] reads:

(20) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or **periodical** that:

(a) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(b) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(c) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more.

(Emphasis added)

C.

Draft New Rule Defining "Debate or Forum"

***DRAFT NEW RULE:**

WAC 390-XX-XXX Debate or Forum. "Debate or forum" means qualifying events under RCW 42.17.020(21)(b) where candidates are invited based upon predefined objective criteria. A qualifying forum may also be scheduled where only one candidate in an uncontested race participates.

CITES:

RCW 42.17.370(1) (rulemaking authority); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); ESSB 5034 Section 6(21) [RCW 42.17.020(21)] (exclusions from electioneering communication definition; authority for commission to exclude other communications).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission had prior rulemaking authority as well, which also remains in law.

ESSB 5034 provides exclusions from what is an electioneering communication. Section 6(21). Section 6(21) also authorizes the Commission to exempt other communications. Two of the excluded items are a "debate or forum." Section 6(21)(b). The terms are not defined. Defining the terms will provide guidance to filers and other participants in the state campaign process.

The statute reads at Section 6(21) [RCW 42.17.020(21)]:

(21) "Electioneering communication" **does not include:**

(a) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(b) Advertising for candidate **debates or forums** when the advertising is paid for by or on behalf of the **debate or forum** sponsor, so long as two or more candidates for the same position have been invited to participate in the **debate or forum**;

(c) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(i) Of primary interest to the general public;

(ii) In a news medium controlled by a person whose business is that news medium;
and

(iii) Not a medium controlled by a candidate or a political committee;

(d) Slate cards and sample ballots;

(e) Advertising for books, films, dissertations, or similar works (i) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (ii) written about a candidate;

(f) Public service announcements;

(g) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(h) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(i) **Any other communication exempted by the commission through rule consistent with the intent of this chapter.**

(Emphasis added)

D.

Draft New Rule Defining "Public Service Announcement"

***DRAFT NEW RULE:**

WAC 390-XX-XXX Public service announcement.

(1) "Public service announcement" means a communication meets all the following criteria. The communication is:

- (a) designed to benefit or promote the community's health, safety or welfare or non-profit community events;
- (b) not selling a product or service;
- (c) sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization;
- (d) of primary interest to the general public and is not targeted to reach only voters or voters in a specific jurisdiction;
- (e) not coordinated with or controlled or paid for by a candidate's authorized committee or political committee;
- (f) subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing or otherwise publishing the communication including policies regarding length, timing and manner of distribution; and,
- (g) one for which the arrangements to include a reference or depiction of the candidate or candidates in the communication were made at least twelve months before the candidate became a candidate.

(2) Examples of public service announcements include but are not limited to communications regarding non-profit community events, outreach or awareness activities such as: breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters.

CITES:

RCW 42.17.370(1) (rulemaking authority); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); ESSB 5034 Section 6(21) [RCW 42.17.020(21)] (exclusions from electioneering communication definition; authority for Commission to exclude other communications).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission had prior rulemaking authority as well, which also remains in law.

ESSB 5034 provides exclusions from what is an electioneering communication. Section 6(21). Section 6(21) also authorizes the Commission to exempt other communications. One of the excluded items is a "public service announcement." Section 6(21)(f). The term is not defined. Defining the term will assist filers and other participants in the state campaign process.

The statute reads at Section 6(21) [RCW 42.17.020(21)]:

(21) "Electioneering communication" **does not include:**

(a) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly

mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(b) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(c) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(i) Of primary interest to the general public;

(ii) In a news medium controlled by a person whose business is that news medium;
and

(iii) Not a medium controlled by a candidate or a political committee;

(d) Slate cards and sample ballots;

(e) Advertising for books, films, dissertations, or similar works (i) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (ii) written about a candidate;

(f) **Public service announcements;**

(g) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(h) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(i) **Any other communication exempted by the commission through rule consistent with the intent of this chapter.**

(Emphasis added)

E.

**Draft New Rule Explaining
Electioneering Communication Exclusions**

***DRAFT NEW RULE:**

WAC 390-XX-XXX Electioneering communication exclusions.

- (1) "Electioneering communication" does not include communications listed in RCW 42.17.020(21).
- (2) "Electioneering communication" also does not include:
 - (a) letters to the editor or comparable communications to news media described in RCW 42.17.020(21)(c);
 - (b) communications conveyed through websites, emails, telephone calls, or in-person leaflet/pamphlet drops at street addresses; or,
 - (c) communications conveyed in a manner not specified in RCW 42.17.020(20).

CITES:

RCW 42.17.370(1) (rulemaking authority); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); ESSB 5034, Section 6(20) [RCW 42.17.020(20)] (electioneering communication definition); ESSB 5034, Section 6(21) [RCW 42.17.020(21)] (exclusions from electioneering communication definition; authority for Commission to exempt other communications).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission had prior rulemaking authority as well, which also remains in law.

ESSB 5034 provides exclusions from what is an electioneering communication. Section 6(21). Section 6(21) also authorizes the Commission to exempt other communications. For example, news items as described in 6(21)(c) are exempted, but there is no specific reference to an exclusion for letters to the editor. The Commission has historically determined that such letters to newspaper editors do not constitute a reportable activity. See current rule at WAC 390-05-290. In addition, there is legislative history that the new law was not intended to extend to websites or emails, or telephone calls. Lastly, any other communications conveyed in a manner not specified in RCW 42.17.020(20) (definition of electioneering communication) would not be reportable. A rule to clearly explain where exemptions are located and what is otherwise exempted from reporting will be helpful to filers and other participants in campaigns.

Section 6(20) [RCW 42.17.020(20)] reads:

(20) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

- (a) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;
- (b) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and
- (c) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more.

(Emphasis added)

Section 6(21) [RCW 42.17.020(21)] reads:

(21) "Electioneering communication" **does not include:**

(a) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(b) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(c) **A news item, feature, commentary, or editorial in a regularly scheduled news medium** that is:

(i) Of primary interest to the general public;

(ii) In a news medium controlled by a person whose business is that news medium;
and

(iii) Not a medium controlled by a candidate or a political committee;

(d) Slate cards and sample ballots;

(e) Advertising for books, films, dissertations, or similar works (i) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (ii) written about a candidate;

(f) Public service announcements;

(g) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(h) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(i) **Any other communication exempted by the commission through rule consistent with the intent of this chapter.**

(Emphasis added)

Current WAC 390-05-290 (adopted in 1985) reads:

WAC 390-05-290 Definition — Political advertising.

Political advertising does not include **letters to the editor**, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the printed space or broadcast time is not normally required.

(Emphasis added)

[Note that WAC 390-05-290 was adopted in 1985 and could be repealed because Chapter 390-18 WAC (political advertising) will need to be amended to update political advertising rules and incorporate electioneering communications. Therefore, updates to the language of WAC 390-05-290 to include electioneering communications language could be addressed in revisions to Chapter 390-18 WAC in February.]

F.

**Draft Amendment
Addressing Exclusion for Slate Cards and Sample Ballots -
WAC 390-17-030**

***DRAFT AMENDED RULE:**

WAC 390-17-030 – “Sample Ballots and Slate Cards.”

(1) **Intent.** The commission finds that, under certain conditions, expenditures for slate cards and other candidate listings fall within the scope of RCW 42.17.640 (14)(a) and are, therefore, exempt from contribution limits and eligible for payment with a bona fide political party's exempt funds. Slate cards and other candidate listings remain reportable under chapter 42.17(-) RCW and subject to the political advertising provisions of the law.

The purpose of this exemption from the contribution limits is to allow political parties and other sponsors to tell the general public which candidates they support. The exemption is not intended as a device to circumvent the contribution limits and full reporting requirements by undertaking any degree of significant campaigning on behalf of candidates.

(2) For purposes of RCW 42.17.020(21) and 42.17.640 (14)(a), "**sample ballots**" means slate cards, or other candidate listings, whether written or oral, that satisfy the qualifying criteria specified in subsection (10) of this section.

(3) Sample ballots constitute political advertising for a slate or list of candidates and must be properly identified and otherwise in compliance with the ~~political advertising~~ provisions of, RCW 42.17.505.510 through 42.17.550.

(4)(a) **A bona fide political party** may use contributions it receives pursuant to RCW 42.17.640(14) to produce and distribute sample ballots.

(b) Expenditures for sample ballots do not count against a bona fide political party's contribution limit to the candidates listed on the sample ballot. Further, when reporting sample ballot expenditures, a bona fide political party is not required to attribute a portion of the expenditure to each of the candidates listed on the sample ballot, but the names of the candidates must be reported along with the other information required by chapter 42.17(-) RCW and chapter 390-17(-) WAC.

(5) **Any person**, as defined by RCW 42.17.020, who makes an expenditure for sample ballots has made an expenditure that does not count against that person's contribution limit to the candidates listed.

(6) **An in-state political committee**, when disclosing expenditures for sample ballots as part of its C-4 report, is not required to attribute a portion of the expenditure to the candidates listed on the sample ballot, but the names of the candidates and their respective party affiliations must be reported along with other information required by chapter 42.17(-) RCW and chapter 390-17(-) WAC.

(7) **An out-of-state committee**, when disclosing expenditures for sample ballots on a C-5 report, is not required to allocate a portion of the expenditure to the candidates listed on the sample ballot, but must report that an expenditure for sample ballots was made, the name and address of the person to whom the expenditure was made, the full amount of the expenditure, and the name, office sought and party affiliation of each candidate listed on the sample ballot. The report is due no later than the 20th day of the month following the month in which the expenditure was made.

(8) If a **lobbyist or lobbyist employer** makes expenditures for sample ballots, those expenditures are required to be reported in detail on the lobbyist's monthly L-2 report. Itemization of these expenditures must include the names and respective party affiliations of the candidates listed on the sample ballot, but no portion of the expenditure need be allocated to individual candidates listed on the sample ballot.

(9) **The candidates listed on a sample ballot** are not required to report any portion of the expenditure as an in-kind contribution to their campaigns.

(10) **Qualifying criteria for sample ballots, slate cards and other candidate listings.** In order not to count against a person's contribution limit to the candidates listed on a sample ballot and, in the case of a bona fide political party, in order to be eligible for payment with contributions received pursuant to RCW 42.17.640(14), a sample ballot must satisfy **all** of the criteria in (a) through (d) of this subsection.

(a) The sample ballot must list the names of at least three candidates for election to public office in Washington state and be distributed in a geographical area where voters are eligible to vote for at least three candidates listed. The candidate listing may include any combination of three or more candidates, whether the candidates are seeking federal, state or local office in Washington.

(b) The sample ballot must not be distributed through public political advertising; for example, through broadcast media, newspapers, magazines, billboards or the like. The sample ballot may be distributed through direct mail, telephone, electronic mail, Web sites, electronic bulletin boards, electronic billboards or personal delivery by volunteers.

(c) The content of a sample ballot is limited to:

- The identification of each candidate (pictures may be used);
- The office or position currently held;
- The office sought;
- Party affiliation; and
- Information about voting hours and locations.

Therefore, the sample ballot must exclude any additional biographical data on candidates and their positions on issues as well as statements about the sponsor's philosophy, goals or accomplishments. The list must also exclude any statements, check marks or other indications showing support of or opposition to ballot propositions.

(d) The sample ballot is a stand-alone political advertisement. It must not be a portion of a more comprehensive message or combined in the same mailing or packet with any other information, including get-out-the-vote material, candidate brochures, or statements about the sponsor's philosophy, goals or accomplishments. On Web sites, electronic bulletin boards or electronic billboards, the sample ballot must be a separate document.

(Bolding emphasis in the original.)

CITES:

RCW 42.17.370(1) (rulemaking authority); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); ESSB 5034 Section 6(21) [RCW 42.17.020(21)] (exclusions from electioneering communication definition; authority for Commission to exclude other communications).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission had prior rulemaking authority as well, which also remains in law.

ESSB 5034 provides exclusions from what is an electioneering communication. Section 6(21). Two of those items are a "slate card and sample ballot." Section 6(21)(d). The terms are not defined. However, the PDC has a current rule at WAC 390-17-030 that could be amended to incorporate the exclusion from reporting electioneering communications that are slate cards and sample ballots. This would be a logical location for filers and other interested persons to look for information regarding slate cards and sample ballots.

The statute reads at Section 6(21) [RCW 42.17.020(21)]:

(21) "Electioneering communication" **does not include:**

(a) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly

mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(b) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(c) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(i) Of primary interest to the general public;

(ii) In a news medium controlled by a person whose business is that news medium; and

(iii) Not a medium controlled by a candidate or a political committee;

(d) **Slate cards and sample ballots;**

(e) Advertising for books, films, dissertations, or similar works (i) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (ii) written about a candidate;

(f) Public service announcements;

(g) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(h) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(i) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

(Emphasis added)

Draft New Rule Defining "General Treasury Funds"

*DRAFT NEW RULE:

WAC 390-XX-XXX General treasury funds. "General treasury funds" means a collective designation of all of the assets of an organization which furnish the means for defraying the necessary, usual, ordinary running and incidental expenses of an organization. General treasury funds are typically not derived from a special solicitation, effort, or receipt, but derive from regular, planned for, and ongoing revenue streams or sources.

CITES:

RCW 42.17.370(1) (rulemaking authority); RCW 42.17.360(1) (authority to develop and provide forms); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); ESSB 5034, Section 3(1) [RCW 42.17.565] (reporting of general treasury funds; forms; rulemaking authority).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission has had prior statutory authority to adopt rules and develop reporting forms, which remains in law.

ESSB 5034 also provides that payments for electioneering communications must be reported on forms developed by the Commission by rule, including communications paid with general treasury funds. The term is not defined. Defining the term would provide guidance to filers and other persons interested in the state campaign process.

The statute at Section 3(1) [RCW 42.17.565] reads:

(1) A payment for or promise to pay for any electioneering communication shall be reported to the commission by the sponsor on forms the commission shall develop by rule to include, at a minimum, the following information:

(a) Name and address of the sponsor;

(b) Source of funds for the communication, including:

(i) **General treasury funds.** The name and address of businesses, unions, groups, associations, or other organizations using **general treasury funds** for the communication, however, if a business, union, group, association, or other organization undertakes a special solicitation of its members or other persons for an electioneering communication, or it otherwise receives funds for an electioneering communication, that entity shall report pursuant to (b)(ii) of this subsection;

(ii) Special solicitations and other funds. The name, address, and, for individuals, occupation and employer, of a person whose funds were used to pay for the electioneering communication, along with the amount, if such funds from the person have exceeded two hundred fifty dollars in the aggregate for the electioneering communication; and

(iii) **Any other source information required or exempted by the commission by rule;**

(c) Name and address of the person to whom an electioneering communication related expenditure was made;

(d) A detailed description of each expenditure of more than one hundred dollars;

(e) The date the expenditure was made and the date the electioneering communication was first broadcast, transmitted, mailed, erected, distributed, or otherwise published;

- (f) The amount of the expenditure;
- (g) The name of each candidate clearly identified in the electioneering communication, the office being sought by each candidate, and the amount of the expenditure attributable to each candidate; and
- (h) Any other information the commission may require or exempt by rule.

(Emphasis added)

Stakeholder Comment:

At the December stakeholder meeting, WEA Assistant General Counsel Aimee Iverson expressed concern about the draft definition of "general treasury funds." She has provided the following email comments and suggestion for your consideration.

From: AIverson@washingtonea.org [mailto:AIverson@washingtonea.org]
Sent: Friday, January 13, 2006 3:03 PM
To: Lori Anderson
Subject: General Treasury Funds

Lori,

I was not able to find an existing definition of "General Treasury Funds" to suggest. But, I think it is important for the Commission to consider incorporating the following language into the definition of "General Treasury Funds." I think the statute itself is pretty clear that special solicitations or receipts of funds for electioneering communications triggers the reporting requirements of the individual sources of contribution. Labor unions sometimes collect other "funds" that are essentially temporary increases in dues, but are not earmarked for specific expenditures. I believe that it would be a good idea to clarify that general dues collections, both ongoing dues and temporary increases, are included in the definition of "General Treasury Funds." So, I would suggest the following language be incorporated into the definition:

General treasury funds include dues collected from members of a union, including temporary dues increases or assessments. Such dues or assessments are not collected for specific expenditures, are not pre-designated and are intended to generally provide support for the organization. Such dues or assessments are expended at the discretion of the leadership of the organization within the parameters of its governing charter, constitution or bylaws.



Please let me know if I may provide additional information or assistance. Thank you.

Aimee Iverson
Assistant General Counsel
Washington Education Association
253-941-6700, ext. 7021
253-946-7232 fax

**Public Disclosure Commission
Electioneering Communication Rules
Implementing ESSB 5034 (Chapter 445, Laws of 2005)
GROUP 2
For January 23, 2006 Commission Meeting**

H.

Draft Rule Defining “Source of Funds”

***DRAFT NEW RULE:**

WAC 390-XX-XXX Source of funds. “Source of funds” means the person or entity directly or indirectly providing the funds for the payment of the electioneering communication or political advertisement. Source of funds is the true origin of the funds for the communication or advertisement consistent with the prohibitions in RCW 42.17.780 and RCW 42.17.120.

CITES:

RCW 42.17.370(1) (rulemaking authority); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); ESSB 5034, Section 3(1)(b) [RCW 42.17.565].

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission has had prior statutory authority to adopt rules, which also remains in law.

ESSB 5034, Section 3(1)(b) provides that the “source of funds” for an electioneering communication must be reported. The reporting would occur on the C-6 form. The phrase “source of funds” is not defined. Defining the phrase would assist filers and other participants in state campaigns.

Section 3(1)(b) [RCW 42.17.565(1)(b)] reads:

(1) A payment for or promise to pay for any electioneering communication shall be reported to the commission by the sponsor on forms the commission shall develop by rule to include, at a minimum, the following information:

(a) Name and address of the sponsor;

(b) **Source of funds for the communication**, including:

(i) General treasury funds. The name and address of businesses, unions, groups, associations, or other organizations using general treasury funds for the communication, however, if a business, union, group, association, or other organization undertakes a special solicitation of its members or other persons for an electioneering communication, or it otherwise receives funds for an electioneering communication, that entity shall report pursuant to (b)(ii) of this subsection;

(ii) Special solicitations and other funds. The name, address, and, for individuals, occupation and employer, of a person whose funds were used to pay for the electioneering communication, along with the amount, if such funds from the person have exceeded two hundred fifty dollars in the aggregate for the electioneering communication; and

(iii) Any other source information required or exempted by the commission by rule;

- (c) Name and address of the person to whom an electioneering communication related expenditure was made;
- (d) A detailed description of each expenditure of more than one hundred dollars;
- (e) The date the expenditure was made and the date the electioneering communication was first broadcast, transmitted, mailed, erected, distributed, or otherwise published;
- (f) The amount of the expenditure;
- (g) The name of each candidate clearly identified in the electioneering communication, the office being sought by each candidate, and the amount of the expenditure attributable to each candidate; and
- (h) Any other information the commission may require or exempt by rule.

(Emphasis added)

Other relevant PDC statutes include:

RCW 42.17.780:

A person may not, directly or indirectly, reimburse another person for a contribution to a candidate for public office, political committee, or political party.

RCW 42.17.120:

No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

I.

Draft Rule Regarding Contribution Limits and Electioneering Communications

***DRAFT NEW RULE:**

WAC 390-XX-XXX Electioneering communications may constitute contributions and be subject to limit.

- (1) Electioneering communications are contributions when they satisfy the definition of contribution in RCW 42.17.020(15) or RCW 42.17.570.
- (2) Contributions are subject to all applicable provisions of chapters 42.17 RCW and 390 WAC, including RCW 42.17.105(8) and RCW 42.17.640.

CITES:

RCW 42.17.370(1) (rulemaking authority); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); RCW 42.17.020 as amended by ESSB 5034, Section 6 (definition of contribution, and referencing electioneering communication); ESSB 5034, Section 4 [RCW 42.17.570] (electioneering communications are contributions); RCW 42.17.640 (contribution limits).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission has had prior statutory authority to adopt rules, which also remains in law.

RCW 42.17.020 defines the term “contribution” and ESSB 5034 provides that a contribution includes the financing of certain electioneering communications. RCW 42.17.640 established contribution limits. To assist filers and persons contemplating making electioneering communications, a rule is drafted to clarify that funds provided for or to finance electioneering communications may be subject to contribution limits.

ESSB 5034, Section 6 [RCW 42.17.020] provides in part that:

(15)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or **electioneering communication** prepared by a candidate, a political committee, or its authorized agent;

...

(Emphasis added)

ESSB 5034, Section 4 [RCW 42.17.570] provides that:

(1) **An electioneering communication** made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents **is a contribution to the candidate.**

(2) **An electioneering communication** made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a political committee or its agents **is a contribution to the political committee.**

(3) If an electioneering communication is not a contribution pursuant to subsection (1) or (2) of this section, the sponsor shall file an affidavit or declaration so stating at the time the sponsor is required to report the electioneering communication expense under RCW 42.17.565.

(Emphasis added)

RCW 42.17.105(8) provides that certain last-minute contributions are prohibited:

(8) It is a violation of this chapter for any person to make, or for any candidate or political committee to accept from any one person, contributions reportable under RCW 42.17.090 in the aggregate exceeding fifty thousand dollars for any campaign for statewide office or exceeding five thousand dollars for any other campaign subject to the provisions of this chapter within twenty-one days of a general election. This subsection does not apply to contributions made by, or accepted from, a bona fide political party as defined in this chapter, excluding the county central committee or legislative district committee.

RCW 42.17.640 provides contribution limits and also directs that:

... (13) **No person may accept contributions that exceed the contribution limitations provided in this section.**

...

(Emphasis added)

Draft Rule Regarding Sponsors, How to Calculate the Reporting Threshold, and When Reporting Is Required

***DRAFT NEW RULE:**

WAC 390-XX-XXX Electioneering communication reporting threshold and sponsors.

- (1) A “sponsor of an electioneering communication” is defined at RCW 42.17.020(43).
- (2) For the purposes of RCW 42.17.020(20)(c), an electioneering communication is reportable by the sponsor to the commission when the communication, alone or in combination:
 - (a) identifies the same candidate in one or more communications satisfying RCW 42.17.020(20)(a) and (b) or commission rules;
 - (b) is made by the same sponsor of one or more of the communications;
 - (c) has a fair market value or aggregate fair market value of \$5,000 or more; and,
 - (d) is not a communication exempted from reporting under RCW 42.17.020(21) or commission rules.
- (3) RCW 42.17.020(20) provides that an electioneering communication is reportable when it, either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of \$5,000 or more.
- (4) When the electioneering communication or communications – including radio or television transmissions, mailings, billboards, newspapers and/or periodicals -- reach the \$5,000 threshold, the sponsor shall electronically report to the commission as required by RCW 42.17.565 within twenty-four hours of, or on the first working day after, the date the electioneering communication is first broadcast, transmitted, erected, distributed, or otherwise published.
- (5) Once the \$5,000 threshold is reached, all subsequent electioneering communications by the sponsor identifying the same candidate are reportable as provided in RCW 42.17.565 and this rule.
- (6) When more than one sponsor pays for the electioneering communication, the entire fair market value of the communication is attributable to all sponsors. All sponsors of the same communication are responsible for reporting once the \$5,000 threshold is met. A failure to report is attributable to all joint sponsors.
- (7) Consistent with WAC 390-16-060 and the requirements of PDC Form C-6, a prorated portion of independent expenditure and electioneering communications expenditures shall be attributed to each candidate or ballot proposition identified in the advertisement or communication. That proration shall be based a reasonable, good faith estimate of the value of the portion of the advertisement or communication relating to each candidate or proposition identified.
- (8) The following is a nonexclusive list of examples of reportable activities for electioneering communications:
 - (a) Sponsor A pays for an electioneering communication identifying Candidate 1 and the communication has a fair market value of \$5,000 or more. The electioneering communication is reportable by Sponsor A.
 - (b) Sponsor A pays for three electioneering communications identifying Candidate 1, and the communications have an aggregate fair market value of \$5,000 (\$1,000 for the first, \$2,000 for the second, and \$2,000 for the third). All three communications are reportable within 24 hours of the third communication being first broadcast, transmitted, erected, distributed or otherwise published. All subsequent electioneering communications by Sponsor A identifying Candidate 1 are reportable.

(c) Sponsors A and B jointly agree to pay for three electioneering communications identifying Candidate 1, and the communications have a total fair market value of \$5,000 (\$1,000 for the first, \$2,000 for the second, and \$2,000 for the third). All three communications become reportable when the third communication is sponsored. All subsequent electioneering communications by Sponsors A and B identifying Candidate 1 are reportable.

(d) Sponsors A and B have separately paid for an electioneering communication identifying Candidate 1, and each communication has a fair market value of \$4,000. Those communications are not reportable because they have not yet reached the \$5,000 threshold. However, Sponsors A and B then jointly agree to pay for another electioneering communication identifying Candidate 1, and the communication has a fair market value of \$1,000. Now the \$5,000 reporting threshold has been reached and within 24 hours of the jointly sponsored communication being published, that communication and prior separately sponsored communications identifying Candidate 1 are reportable by Sponsors A and B. All subsequent electioneering communications by Sponsors A and B identifying Candidate 1 are reportable.

(e) If 80% of one or more electioneering communications with a fair market value of \$7,000 relates to a message or messages about Candidate 1, and the remaining 20% relates equally to two ballot propositions, the communication is reportable by the sponsor or sponsors because the \$5,000 threshold has been met. All subsequent electioneering communications are reportable.

CITES:

RCW 42.17.370(1) (rulemaking authority); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); ESSB 5034, Section 3 [RCW 42.17.565] (reporting to the commission); RCW 42.17.020 as amended by ESSB 5034, Section 6 (electioneering communication; definition of sponsor).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission has had prior statutory authority to adopt rules, which also remains in law.

ESSB 5034, Section 6(20)(c) provides that a reportable electioneering communication occurs when a dollar value for the communication(s) is met. ESSB 5034 provides that an electioneering communication is reportable when it, “[e]ither alone, or in combination with” one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more. At that time, the “sponsor” is required to submit an electronic report to the Commission under Section 3 [RCW 42.17.565]. ESSB 5034 states that a sponsor is a person “paying for” the communication. Section 6. [This statutory definition is very similar to the current PDC definition of “sponsor” in rule, WAC 390-18-010. In February, proposed revisions to Chapter 390-18 WAC will be brought before the Commission.]

A new rule is proposed to explain how the reporting threshold is calculated, how it is calculated when the same sponsor is providing different electioneering communications identifying the same candidate in the communication, how the threshold is calculated when there is more than one sponsor identifying the same candidate in the communication, and when reporting is triggered and when it continues.

ESSB 5034, Section 6(20) [RCW 42.17.020(20)] provides:

(20) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

(a) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(b) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(c) **Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of five thousand dollars or more.**

(Emphasis added)

ESSB 5034, Section 6(43) [RCW 42.17.020(43)] defines:

(43) "Sponsor of an electioneering communications, independent expenditures, or political advertising" means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

ESSB 5034, Section 3(2) [RCW 42.17.565] provides in part that:

...

(2) Electioneering communications shall be reported as follows: **The sponsor of an electioneering communication shall report to the commission within twenty-four hours of, or on the first working day after, the date the electioneering communication is broadcast, transmitted, mailed, erected, distributed, or otherwise published.**

(3) Electioneering communications shall be reported electronically by the sponsor using software provided or approved by the commission. The commission may make exceptions on a case-by-case basis for a sponsor who lacks the technological ability to file reports using the electronic means provided or approved by the commission.

(4) All persons required to report under RCW 42.17.065, 42.17.080, 42.17.090, and 42.17.100 are subject to the requirements of this section, although the commission may determine by rule that persons filing according to those sections may be exempt from reporting some of the information otherwise required by this section. The commission may determine that reports filed pursuant to this section also satisfy the requirements of RCW 42.17.100 and 42.17.103.

(5) Failure of any sponsor to report electronically under this section shall be a violation of this chapter.

(Emphasis added)

K.

Draft Rule Defining “Member”

***DRAFT NEW RULE:**

WAC 390-XX-XXX Member. In determining whether a communication is to a “member” as that term is used in RCW 42.17.020 and RCW 42.17.100, and for the purposes of RCW 42.17.105(8) and RCW 42.17.640:

(1) The commission will examine whether the organization is a legitimate membership organization with common interest goals and objectives, taking into account such factors as the organization’s permanence, structure and whether it has formal organizing documents, membership criteria and services it provides its members.

(2) With respect to the status of members of an organization, the commission will examine whether a valid, active relationship exists between the organization and its members or classes of members for purposes other than influencing the outcome of an election, taking into account such factors as whether the members affirmatively accept membership and the rights and obligations conferred on members by the organization.

(3) If a membership organization and its members satisfy the criteria regarding “membership associations” and “members” established by the Federal Election Commission (FEC) the commission will consider the organization and its members as qualifying for the exemption in RCW 42.17.020(15)(b)(v) and RCW 42.17.020(21)(g), unless the communication was not sent primarily to members. However, these FEC criteria are not the only indicators of legitimate membership organizations or valid members, a determination that will be made by the commission on a case-by-case basis as necessary.

(4) In determining whether an internal political communication is “primarily” limited to the members of an organization or political committee, the commission will consider whether any distribution to non-members is incidental and isolated.

CITES:

RCW 42.17.370(1) (rulemaking authority); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); ESSB 5034, Section 6(21)(g) [RCW 42.17.020], RCW 42.17.100 (member).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission has had prior statutory authority to adopt rules, which also remains in law.

ESSB 5034, Section 6(21)(g) provides that mailed internal communications to “members” of a labor organization, political committee or other membership organization are exempt from reporting requirements. This language parallels what is not a “contribution” under RCW 42.17.020. Prior law also exempted internal communications to “members” from what is an independent expenditure in RCW 42.17.100. Neither prior law nor ESSB 5034 defines “member.”

The Commission’s current rules also do not define “member.” However, in 1995, the Commission adopted an interpretation, PDC Interpretation 95-04, to define “member” for the purposes of what constitutes a contribution and for the purposes of contribution limits per RCW 42.17.640 and the timing restriction on contributions in RCW 42.17.105(8). A copy of the interpretation is provided below. In part, the Commission stated then that

among other factors, it would consider the Federal Elections Commission's rules and determination of whether an organization has "members."

The Commission could withdraw this longstanding interpretation and instead define "member" in rule, and explain that the same definition is being used for activity that does not constitute contributions or electioneering communications. This approach is also consistent with the State Administrative Procedure Act language encouraging agencies to convert longstanding interpretations into rule. RCW 34.05.230(1) ("To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.") This approach would assist filers and other participants in the state campaign process.

ESSB 5034, Section 6(21)(g) [RCW 42.17.020(21)(g)] provides in pertinent part that:

(21) "Electioneering communication" does not include:

...

(g) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(h) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(i) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

(Emphasis added)

In addition, as in 1995, RCW 42.17.020 (15) [formerly (14)] still provides in part that:

(b) "Contribution" does not include:

...

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(Emphasis added)

Finally, RCW 42.17.100 provides:

(1) For the purposes of this section and RCW 42.17.550 the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17.060, 42.17.080, or 42.17.090. **"Independent expenditure" does not include:** An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, **or the members of a labor organization or other membership organization;** or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.

PDC INTERPRETATION

APPROVAL DATE:	October 24, 1995	NUMBER:	95-04
STATUS:	New	SUPERSEDES:	None
REFERENCES:	RCW 42.17.020	APPROVED BY:	The Commission

SEE ALSO:

Internal Political Communications of Membership Organizations

In effect, RCW 42.17.640 limits contributions from membership organizations to candidates for state office, bona fide political parties and caucus political committees. Similarly, RCW 42.17.105(8) restricts aggregate contributions from a membership organization to any candidate or political committee (including a ballot issue committee) to no more than \$5,000 during the 21 days before the general election. However, RCW 42.17.020(14)(b)(v) exempts an “internal political communication primarily limited to . . . the members of a labor organization or other membership organization” from the definition of contribution. This exemption, therefore, allows membership organizations to mail or otherwise transmit endorsements, political advertising, fund raising invitations and the like relating to candidates, political parties, caucus committees and ballot measures to their members without a contribution ensuing to the benefited candidate or committee.

In adopting Initiative 134, the voters found that “[T]he financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates.” Therefore, it is critically important to protect the integrity of the contribution limits while at the same time recognizing and giving meaning to the exemption afforded labor unions and other membership organizations.

For purposes of implementing RCW 42.17.020(14)(b)(v), .105(8) and .640 in an advisory or enforcement matter:

- A. The Commission will examine whether the organization is a legitimate membership organization with common interest goals and objectives, taking into account such factors as the organization's permanence, structure and whether it has formal organizing documents, membership criteria and services it provides its members.
- B. With respect to the status of members of an organization, the Commission will examine whether a valid, active relationship exists between the organization and its members or classes of members for purposes other than influencing the outcome of an election, taking into account such factors as whether the members affirmatively accept membership and the rights and obligations conferred on members by the organization.

Further, if a membership organization and its members satisfy the criteria regarding “membership associations” and “members” established by the Federal

Election Commission (FEC) in 11 CFR 100.8(b)(4), the Public Disclosure Commission will consider the organization and its members as qualifying for the exemption in RCW 42.17.020(14)(b)(v), unless the communication was not sent primarily to members. However, these FEC criteria are not the only indicators of legitimate membership organizations or valid members, a determination that would be made by the Commission on a case-by-case basis as necessary.

C. In determining whether an internal political communication is “primarily” limited to the members of an organization, the Commission will consider whether any distribution to non-members is incidental and isolated.

L.

**Draft Amended Rule To Address
Electioneering Communications and Coordination -
WAC 390-05-210**

At its January 2006 meeting, the Commission will be asked to consider if it wants to amend WAC 390-05-210. The rule currently addresses “contribution” including what happens when coordination between a candidate and another person occurs with respect to political advertising. The rule does not address what happens when the same activities occur with respect to electioneering communications. The options for the Commission include:

- amend the rule, at least minimally, to update its provisions;
- leave the rule alone for now, and examine it at a later date to determine if the coordination issue needs clarification with respect to electioneering communications;
- wait to consider the pending FEC rulemaking and final decision; or
- other options.

For discussion purposes, the language at issue is bolded in subsection (3) (“consulting with a state, local or judicial candidate”). The remaining bolding is in the original text of the rule. (The pertinent language is duplicated in other subsections of the rule and any changes can be duplicated in those sections). A list of questions is provided at the end of this section.

***CURRENT RULE:**

WAC 390-05-210 Definition — Contribution (1) The term "contribution" as defined in RCW 42.17.020 shall be deemed to include, among other things, furnishing services or property or rights on a discriminatory basis or at less than their fair market value as defined in WAC 390-05-235, for the purpose of assisting any candidate or political committee. When such in-kind contribution of goods or services is provided, it shall be reported at its fair market value, per WAC 390-05-235 and, pursuant to RCW 42.17.640, the fair market value is the amount of the contribution to be allocated to the contributor in determining compliance with the contributor's contribution limit.

(2) ***Duplicating political advertising.*** The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or the authorized agent of a candidate or political committee is a contribution to the candidate or political committee.

(3) ***Consulting with a state, local or judicial candidate.*** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent is a contribution to such candidate. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent when:

(a) Any arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents; or

(b) An expenditure is made based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, the candidate's authorized committee or agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through or in consultation with any person who, during the current election cycle, (i) is or has been authorized to raise or spend over \$500 per election on behalf of the candidate, or (ii) is or has been an officer of the candidate's authorized committee; or

(d) The expenditure is made by or in consultation with any person who, during the current election cycle, is or has been receiving any form of campaign-related compensation or reimbursement from the candidate, the candidate's authorized committee or agent.

(4) *Consulting with a caucus political committee.* An expenditure, that does not qualify as a contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a caucus political committee or its agent is a contribution to such caucus political committee. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a caucus political committee or its agent when:

(a) Any arrangement, coordination or direction by the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or prior to an expenditure being made by that person supporting that caucus political committee or one or more of the candidates supported by it or opposing one or more of those candidates' opponents; or

(b) An expenditure is made based on information about the caucus political committee's plans, projects or needs provided to the expending person by the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus with a view toward having an expenditure made; or

(c) An expenditure is made by, through or in consultation with any person who, during the current election cycle, (i) is or has been authorized to raise or spend over \$500 per year on behalf of the caucus political committee, or (ii) is or has been an officer of another political committee financed, controlled or operated by the caucus; or

(d) The expenditure is made by or in consultation with any person who, during the current election cycle, is or has been receiving any form of campaign-related compensation or reimbursement from the caucus political committee, its agent or another political committee financed, controlled or operated by the caucus.

(5) *Consulting with a bona fide political party.* An expenditure, that does not qualify as an contribution to a candidate under subsection (3) of this section, made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a bona fide political party or its agent is a contribution to such bona fide political party. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a bona fide political party when:

(a) Any arrangement, coordination or direction by the bona fide political party, its agent or a political committee financed, controlled or operated by the party is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or prior to an expenditure being made by that person supporting that bona fide political party or one or more of the candidates supported by it or opposing one or more of those candidates' opponents; or

(b) An expenditure is made based on information about the bona fide political party's plans, projects or needs provided to the expending person by the bona fide political party or its agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through or in consultation with any person who, during the current election cycle, (i) is or has been authorized to raise or spend over \$2,500 per year in nonexempt funds on behalf of the bona fide political party, or (ii) is or has been an officer of a political committee financed, controlled or operated by the bona fide political party; or

(d) The expenditure is made by or in consultation with any person who, during the current election cycle, is or has been receiving any form of campaign-related compensation or reimbursement from the bona fide political party, its agent or a political committee financed, controlled or operated by the bona fide political party.

(6) ***Consulting with other political committees.*** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee is a contribution to such political committee. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee when:

(a) Any arrangement, coordination or direction by the political committee, its agent or another political committee financed, controlled or operated by the committee is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or prior to an expenditure being made by that person supporting that political committee; or

(b) An expenditure is made based on information about the political committee's plans, projects or needs provided to the expending person by the political committee or its agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through or in consultation with any person who, during the current election cycle, (i) is or has been authorized to raise or spend over \$5,000 on behalf of the political committee or another political committee financed, controlled or operated by the committee, or (ii) is or has been an officer of the political committee or another political committee financed, controlled or operated by the committee; or

(d) An expenditure is made by or in consultation with any person who, during the current election cycle, is or has been receiving any form of campaign-related compensation or reimbursement from the political committee, its agent or another political committee financed, controlled or operated by the committee.

CITES:

RCW 42.17.370(1) (rulemaking authority); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); RCW 42.17.100 and RCW 42.17.020 (independent expenditure); and ESSB 5034, Section 6 (electioneering communication; contribution).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission has had prior statutory authority to adopt rules, which also remains in law.

The Legislature has already provided that there is a twelve-month look-back period for two of the exclusions from electioneering communications. ESSB 5034, Section 6 (20). ESSB 5034 also provides that an electioneering communication is a contribution when, as stated in Section 6 [RCW 42.17.020]:

(15)(a) **"Contribution" includes:**

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) **An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, or their agents;**

(iii) **The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;**

....

(Emphasis added)

ESSB 5034, Section 4 [RCW 42.17.570] provides that:

(1) An electioneering communication made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents is a contribution to the candidate.

(2) An electioneering communication made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a political committee or its agents is a contribution to the political committee.

(3) If an electioneering communication is not a contribution pursuant to subsection (1) or (2) of this section, the sponsor shall file an affidavit or declaration so stating at the time the sponsor is required to report the electioneering communication expense under RCW 42.17.565.

QUESTIONS FOR THE COMMISSION

1. Should there be one standard for “coordination” between a campaign and a spender that is used to determine when a would-be independent expenditure is actually a contribution, and when a would-be electioneering communication is actually a contribution? In other words, should there be one standard that gives as bright a line as possible about when a spender has received inside information or is otherwise too close to a campaign or its operatives to truly make expenditures independent of that campaign. (If the law is to have meaningful contribution limits, it’s important to know what is included in the definition of contribution.)

2. The FEC is currently in rulemaking to define coordination. The current FEC rules set out a three-prong test for determining whether a communication is “coordinated” and therefore an in-kind contribution under FEC rules. The prongs relate to payment, content, and conduct. In *Shays v. FEC*, a federal court invalidated one aspect of the content prong because the court found the FEC had not given a sufficient explanation. 11 C.F.R § 109.21. The FEC has begun rulemaking to respond to the federal court’s ruling. Does the Commission wish to postpone its own rulemaking pending the outcome of the FEC’s approach?

3. Does the Commission wish to amend WAC 390-05-210 at this time to make a minimal number of changes that recognize that the rule was adopted over a decade ago without the case law and practical experience guidance available today? This rule could then be re-examined and modified, if necessary, after the FEC’s rulemaking activity and any ensuing appeals.

If so, the Commission may wish to consider the following draft language.

Draft Amendment to WAC 390-05-210 Definition -- Contribution

...

(3) Consulting with a state, local or judicial candidate. An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent is a contribution to such candidate. An expenditure is presumed to be made

in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent when:

(a) Any arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution, display or broadcast of (i) political advertising or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents, or (ii) electioneering communications identifying that candidate or one or more of that candidate's opponents; or

(b) An expenditure is made based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, the candidate's authorized committee or agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through, ~~((or))~~ in consultation with, or with the assistance of, including the fundraising assistance of, any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, ~~((i) is or has been authorized to raise or spend over \$500 per election on behalf of the candidate, or (ii))~~ is or has been an officer of the candidate's authorized committee; or

(d) The expenditure is made by or in consultation with any person who, during the ~~((current election cycle))~~ twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the candidate, the candidate's authorized committee or agent.

COMMENTS RE DRAFT AMENDMENT:

The draft language

- 1) includes a reference to electioneering communications,
- 2) clarifies that if an officer of a candidate's campaign helps raise funds for an expenditure, that expenditure is a contribution, and
- 3) shortens from "current election cycle" (which is two or four years) to 12 months the period of time during which a spender may not consult with a campaign officer or vendor if that spender is to be presumed independent of the campaign benefited.

M.

Draft Rule Regarding Exemptions from Filing

***DRAFT NEW RULE:**

WAC 390-XX-XXX Additional information regarding C-6 report filing.

- (1) A political committee reporting pursuant to RCW 42.17.065, 42.17.080 and 42.17.090 is exempt from providing on a C-6 form itemized information concerning its sources of funds giving in excess of \$250 for an electioneering communication, unless the committee received funds that were requested or designated for the communication.
- (2) An out-of-state political committee shall report pursuant to RCW 42.17.565 if it sponsors an electioneering communication defined in RCW 42.17.020.
- (3) The sponsor of an electioneering communication shall report pursuant to RCW 42.17.565 and commission rules regarding electioneering communications, even if the expenditure also satisfies the definition of independent expenditure in RCW 42.17.020 or RCW 42.17.100. Persons in compliance with this subsection are deemed in compliance with RCW 42.17.100 or 42.17.103.
- (4) Any person making an expenditure that is reportable under RCW 42.17.200, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW 42.17.020 shall file pursuant to RCW 42.17.565 and commission rules regarding electioneering communications.

CITES:

RCW 42.17.370(1) (rulemaking authority); ESSB 5034, Section 2 [RCW 42.17.562] (rulemaking authority); ESSB 5034, Section 3(4) [RCW 42.17.565], RCW 42.17.100; RCW 42.17.103; and RCW 42.17.200 (grass roots lobbying).

COMMENTS:

ESSB 5034 provides that the Commission is authorized to adopt rules to implement the act. The Commission has had prior statutory authority to adopt rules, which also remains in law.

ESSB 5034, Section 3(4), makes it clear that political committees filing C-3 and C-4 reports are subject to the special reporting of electioneering communications. However, the Commission has the authority to exempt these committees from disclosing some of the otherwise required information. See subsection (1) of the draft rule.

In subsection (2), the draft rule emphasizes that out-of-state political committees are subject to reporting any electioneering communications they sponsor.

ESSB 5034, Section 3(4), also authorizes the Commission to determine that reporting under the electioneering communications provisions fulfills any other requirement the sponsor might have to report an independent expenditure. See subsection (3) of the draft rule.

In the event that an expenditure is required to be reported under RCW 42.17.200 and 42.17.565, it does not appear that under ESSB 5034 Section 3 the Commission has the authority to relieve that sponsor from either obligation. See subsection (4) of the draft rule.

Section 3 reads as follows:

1) A payment for or promise to pay for any electioneering communication shall be reported to the commission by the sponsor on forms the commission shall develop by rule to include, at a minimum, the following information:

(a) Name and address of the sponsor;

(b) Source of funds for the communication, including:

(i) General treasury funds. The name and address of businesses, unions, groups, associations, or other organizations using general treasury funds for the communication, however, if a business, union, group, association, or other organization undertakes a special solicitation of its members or other persons for an electioneering communication, or it otherwise receives funds for an electioneering communication, that entity shall report pursuant to (b)(ii) of this subsection;

(ii) Special solicitations and other funds. The name, address, and, for individuals, occupation and employer, of a person whose funds were used to pay for the electioneering communication, along with the amount, if such funds from the person have exceeded two hundred fifty dollars in the aggregate for the electioneering communication; and

(iii) Any other source information required or exempted by the commission by rule;

(c) Name and address of the person to whom an electioneering communication related expenditure was made;

(d) A detailed description of each expenditure of more than one hundred dollars;

(e) The date the expenditure was made and the date the electioneering communication was first broadcast, transmitted, mailed, erected, distributed, or otherwise published;

(f) The amount of the expenditure;

(g) The name of each candidate clearly identified in the electioneering communication, the office being sought by each candidate, and the amount of the expenditure attributable to each candidate; and

(h) Any other information the commission may require or exempt by rule.

(2) Electioneering communications shall be reported as follows: The sponsor of an electioneering communication shall report to the commission within twenty-four hours of, or on the first working day after, the date the electioneering communication is broadcast, transmitted, mailed, erected, distributed, or otherwise published.

(3) Electioneering communications shall be reported electronically by the sponsor using software provided or approved by the commission. The commission may make exceptions on a case-by-case basis for a sponsor who lacks the technological ability to file reports using the electronic means provided or approved by the commission.

(4) All persons required to report under RCW 42.17.065, 42.17.080, 42.17.090, and 42.17.100 are subject to the requirements of this section, although the commission may determine by rule that persons filing according to those sections may be exempt from reporting some of the information otherwise required by this section. The commission may determine that reports filed pursuant to this section also satisfy the requirements of RCW 42.17.100 and 42.17.103.

(5) Failure of any sponsor to report electronically under this section shall be a violation of this chapter.

RCW 42.17.100 Special Reports – Independent Expenditures

1) For the purposes of this section and RCW 42.17.550 the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17.060, 42.17.080, or 42.17.090. "Independent expenditure" does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.

(2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission and the county elections officer of the county of residence for the candidate supported or opposed by the independent expenditure (or in the case of an expenditure made in support of or in opposition to a local ballot proposition, the county of residence for the person making the expenditure) an initial report of all independent expenditures made during the campaign prior to and including such date.

(3) At the following intervals each person who is required to file an initial report pursuant to subsection (2) of this section shall file with the commission and the county elections officer of the county of residence for the candidate supported or opposed by the independent expenditure (or in the case of an expenditure made in support of or in opposition to a ballot proposition, the county of residence for the person making the expenditure) a further report of the independent expenditures made since the date of the last report:

(a) On the twenty-first day and the seventh day preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election; and (c) On the tenth day of each month in which no other reports are required to be filed pursuant to this section. However, the further reports required by this subsection (3) shall only be filed if the reporting person has made an independent expenditure since the date of the last previous report filed.

The report filed pursuant to paragraph (a) of this subsection (3) shall be the final report, and upon submitting such final report the duties of the reporting person shall cease, and there shall be no obligation to make any further reports.

(4) All reports filed pursuant to this section shall be certified as correct by the reporting person.

(5) Each report required by subsections (2) and (3) of this section shall disclose for the period beginning at the end of the period for the last previous report filed or, in the case of an initial report, beginning at the time of the first independent expenditure, and ending not more than one business day before the date the report is due:

(a) The name and address of the person filing the report;

(b) The name and address of each person to whom an independent expenditure was made in the aggregate amount of more than fifty dollars, and the amount, date, and purpose of each such expenditure. If no reasonable estimate of the monetary value of a particular independent expenditure is practicable, it is sufficient to report instead a precise description of services, property, or rights

furnished through the expenditure and where appropriate to attach a copy of the item produced or distributed by the expenditure;

(c) The total sum of all independent expenditures made during the campaign to date; and

(d) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter.

RCW 42.17.103 Special reports – Political advertising.

(1) The sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.

(2) If a sponsor is required to file a special report under this section, the sponsor shall also deliver to the commission within the delivery period established in subsection (1) of this section a special report for each subsequent independent expenditure of any size supporting or opposing the same candidate who was the subject of the previous independent expenditure, supporting or opposing that candidate's opponent, or supporting or opposing the same ballot proposition that was the subject of the previous independent expenditure.

(3) The special report must include at least:

(a) The name and address of the person making the expenditure;

(b) The name and address of the person to whom the expenditure was made;

(c) A detailed description of the expenditure;

(d) The date the expenditure was made and the date the political advertising was first published or otherwise presented to the public;

(e) The amount of the expenditure;

(f) The name of the candidate supported or opposed by the expenditure, the office being sought by the candidate, and whether the expenditure supports or opposes the candidate; or the name of the ballot proposition supported or opposed by the expenditure and whether the expenditure supports or opposes the ballot proposition; and

(g) Any other information the commission may require by rule.

(4) All persons required to report under RCW 42.17.080, 42.17.090, and 42.17.100 are subject to the requirements of this section. The commission may determine that reports filed pursuant to this section also satisfy the requirements of RCW 42.17.100.

(5) The sponsor of independent expenditures supporting a candidate or opposing that candidate's opponent required to report under this section shall file with each required report an affidavit or declaration of the person responsible for making the independent expenditure that the expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, the candidate, the candidate's authorized committee, or the candidate's agent, or with the encouragement or approval of the candidate, the candidate's authorized committee, or the candidate's agent.

RCW 42.17.200 Grass roots lobbying campaigns.

(1) Any person who has made expenditures, not reported by a registered lobbyist under RCW 42.17.170 or by a candidate or political committee under RCW 42.17.065 or 42.17.080, exceeding *five hundred dollars in the aggregate within any three-month period or exceeding *two hundred dollars in the aggregate within

any one-month period in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation shall be required to register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots lobbying campaign.

(2) Within thirty days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall register by filing with the commission a registration statement, in such detail as the commission shall prescribe, showing:

(a) The sponsor's name, address, and business or occupation, and, if the sponsor is not an individual, the names, addresses, and titles of the controlling persons responsible for managing the sponsor's affairs;

(b) The names, addresses, and business or occupation of all persons organizing and managing the campaign, or hired to assist the campaign, including any public relations or advertising firms participating in the campaign, and the terms of compensation for all such persons;

(c) The names and addresses of each person contributing twenty-five dollars or more to the campaign, and the aggregate amount contributed;

(d) The purpose of the campaign, including the specific legislation, rules, rates, standards, or proposals that are the subject matter of the campaign;

(e) The totals of all expenditures made or incurred to date on behalf of the campaign, which totals shall be segregated according to financial category, including but not limited to the following: Advertising, segregated by media, and in the case of large expenditures (as provided by rule of the commission), by outlet; contributions; entertainment, including food and refreshments; office expenses including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount thereof paid or incurred for lobbying campaign activities; consultants; and printing and mailing expenses.

(3) Every sponsor who has registered under this section shall file monthly reports with the commission, which reports shall be filed by the tenth day of the month for the activity during the preceding month. The reports shall update the information contained in the sponsor's registration statement and in prior reports and shall show contributions received and totals of expenditures made during the month, in the same manner as provided for in the registration statement.

(4) When the campaign has been terminated, the sponsor shall file a notice of termination with the final monthly report, which notice shall state the totals of all contributions and expenditures made on behalf of the campaign, in the same manner as provided for in the registration statement.